

## **POLICY STATEMENT**

### **Section 26.1, 26.23**

### **Objectives/Policy Statement**

The City of San Jose has established a Disadvantaged Business Enterprise (DBE) Program for Norman Y. Mineta San José International Airport in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Norman Y. Mineta San José International Airport has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of San José has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the City to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Nina Grayson, the City's Director of the Office of Equality Assurance, has been delegated as the DBE Liaison Officer. In that capacity, Ms. Grayson is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the Department of Transportation.

The City has disseminated this policy statement to the City Council and all departments of the City. We have distributed this statement to DBE and non-DBE business communities in our area. This distribution is accomplished by posting our Policy Statement on the City's website at [www.sanjose.ca.gov](http://www.sanjose.ca.gov) and the Airport's website at [www.flysanjose.com](http://www.flysanjose.com).

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Norberto Dueñas  
Interim City Manager

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Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

The objectives are found in the policy statement on the first page of this Program.

### **Section 26.3 Applicability**

The City of San José is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

### **Section 26.5 Definitions**

The City of San José will use terms in this Program that have the meaning defined in Section 26.5.

### **Section 26.7 Non-discrimination Requirements**

The City of San José will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the City of San José will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

### **Section 26.11 Record Keeping Requirements**

#### **Reporting to DOT: 26.11**

(b) You must continue to provide data about your DBE Program to the Department as directed by DOT operating administrations.

We will report DBE participation to DOT/FAA as follows:

We will transmit to FAA annually on December 1, the “Uniform Report of DBE Awards or Commitments and Payments” form, found in Appendix B to this part. We will also report the DBE Contractor firms contact information either on the FAA DBE Contractor’s Form or other similar format.

The City of San José will transmit the information electronically via dbE-Connect at <http://faa.dbeconnect.com/FAA/login.asp>.

#### Bidders List: 26.11(c)

The City of San José will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

The City of San José will collect this information by including a Bidder's List of Subcontractors (DBE and NON-DBE) – Part I and Part II forms in all bid specifications. On the Part I form, the bidder shall list all subcontractors, both DBE and non-DBE, in accordance with Section 2-1.054 of Standard Specifications and per Title 49, Section 26.11 of the Code of Federal Regulations. On the Part II form, the bidder shall list all subcontractors, both DBE and non-DBE, who provided a quote or bid but were not selected to participate as a subcontractor on this project.

#### **Section 26.13 Federal Financial Assistance Agreement**

The City of San José has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a) - Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

The City of San José shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The City of San Jose shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The City of San José's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of San José of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.* ).

#### Contract Assurance: 26.13b

The City of San José will ensure that the following clause is included in each contract we sign with a contractor and each subcontract the prime contractor signs with a subcontractor:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of San José deems appropriate.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

The City of San José will receive grant(s) for airport improvements totaling at least \$250,000 in a Federal fiscal year. We will continue to carry out this DBE Program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program for approval.

The City of San José is not eligible to receive DOT financial assistance unless DOT has approved our DBE Program and we are in compliance with it and this part. We will continue to carry out our program until all funds from DOT financial assistance have been expended.

### **Section 26.23 Policy Statement**

The Policy Statement is elaborated on the first page of this DBE Program.

### **Section 26.25 DBE Liaison Officer (DBELO)**

We have designated the following individual as our DBE Liaison Officer:

Nina Grayson  
Director, Office of Equality Assurance  
City of San José  
200 East Santa Clara Street  
Fifth Floor  
San Jose CA 95113

Telephone: 408-535-8455

Email: [nina.grayson@sanjoseca.gov](mailto:nina.grayson@sanjoseca.gov)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City of San José complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program in coordination with other appropriate officials. The DBELO has a staff of five to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.

5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes City's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the City Manager and City Council on DBE matters and achievement.
9. Determines contractor compliance with good faith efforts.
10. Plans and participates in DBE training seminars.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

## **Section 26.27 DBE Financial Institutions**

It is the policy of the City of San José to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

The City of San José's Office of Economic Development has the responsibility of formulating and implementing various strategies and programs to foster business growth, job creation and a strong revenue base to meet the needs of San Jose's diverse community. The Office of Economic Development refers businesses to the following financial institutions for the best assistance. These institutions and other resources are generally non-profit and are run by women or minorities.

Chambers of Commerce: Portuguese, Black, Hispanic, Japanese, Vietnamese, Filipino  
Workforce Development/Mission College  
Center for International Trade  
De Anza Applied Technology Assistance  
Workforce Development/West Valley College  
International Business Incubator  
East Side Law Center  
CA Resources & Training  
Silicon Valley Community Ventures  
Silicon Valley Small Business Development Center

## **Section 26.29 Prompt Payment Mechanisms**

The City of San José has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

We will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. We will use the following method to comply with this requirement:

Hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

The City of San José will consider a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City of San José. When the City of San José has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

The City of San José will provide appropriate means to enforce the requirements of this section. These means include:

Upon receipt of a payment request, the Project Manager shall act in accordance with both of the following:

1. Each payment request shall be reviewed by the Project Manager as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
2. Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven days after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

Payment requests approved before Wednesday will be paid in the check run on the Friday of the following week. With prior notice, checks may be picked up rather than mailed.

The prime contractor shall pay to his/her subcontractors within 10 days of receipt of each progress payment the respective amounts allowed the contractor on account of the work performed by his/her subcontractors to the extent of each subcontractor's interest therein.

In the event there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, then the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.

Any contractor who violates this section shall pay to the subcontractor a penalty of 2 percent of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his/her attorney's fees and costs.

Any diversion by the contractor of payments received for prosecution of a contract or failure to reasonably account for the application or use of the payments constitutes grounds for disciplinary action by the Contractors' State License Board. The subcontractor shall notify in writing the Contractors' State License Board and the Department of any payment less than the amount or percentage approved for the class or item of work as set forth in Section 10261 of the Public Contracts Code.

The City of San José's Project Manager's Grant Manual contains this language. Additionally, project managers are required to monitor the payments to the subcontractors as part of the normal project management process.

The City of San José will include the following clause in each DOT-assisted contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the City of San Jose. This clause applies to both DBE and non-DBE subcontractors.

### **Section 26.31 Directory**

The Directory identifying all firms eligible to participate as DBEs is available at [www.dot.ca.gov/hq/bep](http://www.dot.ca.gov/hq/bep) or by contacting the California Department of Transportation's Office of Business and Economic Opportunity at 1-916-324-1700.

The State of California revises the Directory at least annually.

### **Section 26.33 Over-concentration**

The City of San José has not identified that over-concentration exists in the types of work that DBEs perform.

### **Section 26.35 Business Development Programs**

The City of San José has an outreach program but has not established a business development program.

### **Section 26.37 Monitoring and Enforcement Mechanisms**

The City of San José will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 7 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our DBE Program.
3. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.

4. We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by the Project Manager and City Inspector to ensure that work committed to DBEs at contract award or subsequently is actually performed by the DBEs to which the work was committed. The Project Manager and City Inspector shall provide written certification that the contracting records have been reviewed.
5. We will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

#### **Section 26.39 Fostering small business participation.**

The City of San José has created a Small Business Element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The City of San José's Small Business Element Program is incorporated as Attachment 10 to this DBE Program. We will actively implement the program elements to foster small business participation; doing so is a requirement of good faith implementation of our DBE program.



## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Set-asides or Quotas**

The City of San José does not use quotas in any way in the administration of this DBE program.

### **Section 26.45 Overall Goals**

The City of San José will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding FAA funded prime contracts exceeding \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the City of San Jose will submit its Overall Three-year DBE Goal to FAA by August 1 as required by the established schedule below.

<b>Airport Type</b>	<b>Region</b>	<b>Date Due (Goal Period)</b>	<b>Next Goal Due (Goal Period)</b>
<b>Large &amp; Medium Hub Primary</b>	<b>All Regions</b>	<b>August 1, 2010 (2011/2012/2013)</b>	<b>August 1, 2013 (2014/2015/2016)</b>
<b>Small Hub Primary</b>	<b>All Regions</b>	<b>August 1 2011 (2012/2013/2014)</b>	<b>August 1, 2014 (2015/2016/2017)</b>
<b>Non-Hub Primary</b>	<b>All Regions</b>	<b>August 1 2012 (2013/2014/2015)</b>	<b>August 1, 2015 (2016/2017/2018)</b>
<b>Non-Primary (GAs, Relievers and State DOTs)</b>	<b>Alaskan, Eastern, &amp; Great Lakes</b>	<b>August 1 2010 (2011/2012/2013)</b>	<b>August 1, 2013 (2014/2015/2016)</b>
<b>Non-Primary (GAs, Relievers and State DOTs)</b>	<b>New England, Northwest Mountain, &amp; Southern</b>	<b>August 1 2011 (2012/2013/2014)</b>	<b>August 1, 2014 (2015/2016/2017)</b>
<b>Non-Primary (GAs, Relievers and State DOTs)</b>	<b>Central, Southwest, and Western-Pacific</b>	<b>August 1 2012 (2013/2014/2015)</b>	<b>August 1, 2015 (2016/2017/2018)</b>

DBE goals will be established for those fiscal years we anticipate awarding DOT-assisted prime contracts exceeding \$250,000 during the three-year period. The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the City of San Jose does not anticipate awarding more than \$250,000 in DOT-assisted prime contracts during any of the years within the three-year reporting period, we will not develop an overall goal; however this DBE Program will remain in effect and the City of San José will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

The first step is to determine the relative availability of DBEs in the market area, “base figure”. The second step is to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

In establishing the overall goal, the City of San José will consult with minority, women’s and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of San José’s efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at San Jose City Hall, 200 East Santa Clara Street, Fifth Floor, San Jose CA 95113 for 30 days following the date of the notice, and informing the public that the City of San Jose and DOT/FAA will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority- focus media and trade publications, websites. Normally, we will issue this notice by June 1 of the reporting period of the goal. The notice will include addresses to which comments may be sent and addresses, including email addresses where the proposal may be reviewed.

Our Overall Three-Year DBE Goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and our responses.

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 to this program.

#### **Section 26.47 Failure to meet overall goals.**

The City of San José will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

If the City of San José awards and commitments shown on our Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will do the following in order to be regarded by the Department as implementing your DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year;
- (3) The City of San José will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c) (1) and (2) of this section to the FAA for approval.

#### **Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation**

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program.

## **Section 26.51(d-g) Contract Goals**

The City of San José will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39..

If our approved projection under paragraph (c) of this section estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year, unless it becomes necessary in order meet our overall goal.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

## **Section 26.53 Good Faith Efforts Procedures**

### Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The City of San José is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as Responsible.

We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

#### Information to be submitted (26.53(b))

The City of San José treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsibility.

**Responsibility-** Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information within four business days of being notified that they are the successful bidders, but before the contract is executed:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

#### Administrative reconsideration (26.53(d))

Within seven business days of being informed by the City of San José that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offers should make this request in writing to the following reconsideration official: David Sykes, Public Works Director, 200 East Santa Clara Street, 5<sup>th</sup> Floor, San Jose CA 95113. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

#### Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

The City of San José will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) We have determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that we have determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to us its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise us and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why we should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), we may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

If the contractor fails or refuses to comply in the time specified, the Project Manager will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the Project Manager may issue a termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City of San Jose to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offers, including those who qualify as a DBE. A DBE contract goal of \_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

#### **Section 26.55 Counting DBE Participation**

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 – 26.73      Certification Process**

The California Unified Certification Program (CUCP) will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The CUCP will make certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

California Department of Transportation  
Office of Business & Economic Opportunity  
ATTN: Certification Unit  
1823 14<sup>th</sup> Street  
Sacramento CA 95811  
Telephone Number: 1-916-324 1700

The Roster of Certifying Agencies is found at:  
[http://www.dot.ca.gov/hq/bep/downloads/pdf/Agency\\_Roster.pdf](http://www.dot.ca.gov/hq/bep/downloads/pdf/Agency_Roster.pdf)

DBE Certification application forms are found at:  
[http://www.dot.ca.gov/hq/bep/business\\_forms.htm](http://www.dot.ca.gov/hq/bep/business_forms.htm)

The DBE certification application forms and documentation requirements are found in Attachment 8 to this Program.

## **SUBPART E – CERTIFICATION PROCEDURES**

### **Section 26.81 Unified Certification Programs**

The City of San José is a member of a Unified Certification Program (UCP) administered by California Department of Transportation. The UCP will meet all of the requirements of this section.

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.109      Information, Confidentiality, Cooperation**

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Notwithstanding any provision of Federal or state law, we will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, we will must transmit this information to DOT

in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

#### Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of San Jose or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.



## **ATTACHMENTS**

- Attachment 1 Regulations: 49 CFR Part 26 or website link
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 DBE Directory or link to
- Attachment 5 DBE Goal Methodology
- Attachment 6 Demonstration of Good Faith Efforts or Good Faith Effort Plan - Form 1 & 2 for
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 DBE Certification Application Form
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program

## **ATTACHMENT 1**

Regulations: 49 CFR Part 26, or link to website

<http://www.ecfr.gov/cgi-bin/text-idx?SID=13af74af528520ba427cf26a184fd02&node=pt49.1.26&rgn=div5>

## **ATTACHMENT 2**

See Attached Organizational Chart

### **ATTACHMENT 3**

See Attached Bidder's List of Subcontractors (DBE and Non-DBE) Part I and Part II Forms

**ATTACHMENT 4**

California DBE Directory

[http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

## ATTACHMENT 5

### **CITY OF SAN JOSÉ/NORMAN Y. MINETA INTERNATIONAL AIRPORT DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PROPOSED THREE-YEAR OVERALL GOAL & METHODOLOGY FOR FEDERAL FISCAL YEARS 2014 THROUGH 2016**

Rosales Business Partners LLC, Exstare Federal Services Group, LLC, and BBC Research & Consulting (referred to collectively as the study team) worked with the City of San Jose (City) to determine an overall DBE participation race-neutral goal of 10.28% for Norman Y. Mineta San José International Airport (SJC or Airport) for Federal Fiscal Years 2014-2016 (FFYs 2014-2016). In setting this proposed overall DBE goal, the study team closely followed the U.S. Department of Transportation (USDOT) DBE Program regulations set forth in 49 Code of Federal Regulations Part 26 (49 CFR Part 26), including the two-step goal-setting methodology in 49 CFR Section 26.45.

#### **Step 1. Determining a Base Figure – 49 CFR Section 26.45(c)**

SJC began the process of determining its overall DBE goal for FFYs 2014-2016 by establishing a base figure for the relative availability of DBEs. Consistent with United States Department of Transportation (USDOT) guidance, SJC established a base figure using data from a “custom census” availability analysis that the study team conducted for SJC. For the purposes of establishing a base figure, the availability analysis was limited to the availability of *potential DBEs*—minority- and women-owned businesses that are DBE-certified or appear that they could be DBE-certified based on revenue requirements described in federal regulations including 49 CFR Section 26.65—for Federal Aviation Administration (FAA)-funded prime contracts and subcontracts that SJC awarded between August 2009 and July 2014 (referred to herein as the study period).<sup>1</sup> SJC has determined that the mix of the types and sizes of FAA-funded contracts that it anticipates awarding in FFYs 2014 through 2016 will be similar to the mix of types and sizes of FAA-funded contracts that it awarded during the study period.

**Methodology for the availability analysis.** The study team’s availability analysis focused on specific areas of work (i.e., subindustries) related to the types of FAA-funded construction contracts that SJC awarded during the study period. The study team identified specific subindustries for inclusion in the availability analysis and identified the geographic market area in which SJC awarded most of the corresponding contract dollars (i.e., the relevant geographic market area). The study team determined the California counties of Santa Clara and Alameda to be SJC’s relevant geographic market area for FFYs 2014-2016. Contractors in those two counties received 89 percent of SJC’s FAA-funded contract expenditures during the study period. The study team then developed a database of potentially available businesses through surveys with local business establishments within relevant subindustries.

**Overview of availability surveys.** BBC conducted telephone surveys with business owners and managers to identify businesses that are potentially available for SJC FAA-funded prime contracts and subcontracts.<sup>2,3</sup> BBC began the interview process by collecting information about

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<sup>1</sup> Consistent with USDOT guidance, SJC considers any contract with at least \$1 of FAA funding as an “FAA-funded contract” and includes the total value of the contract in its pool of total FAA-funded contracting dollars.

<sup>2</sup> The majority of availability interviews were conducted for Caltrans disparity studies conducted in 2012 and 2014.

business establishments from Dun & Bradstreet (D&B) Marketplace listings. BBC collected information about all business establishments listed under 8-digit work specialization codes (as developed by D&B) that were most related to the California transportation contracting industry. BBC attempted to contact approximately 1,600 businesses in the transportation contracting industry that are located in Alameda or Santa Clara counties.

**Information collected in availability surveys.** Telephone surveys were conducted with the owners or managers of the identified business establishments. Survey questions covered many topics about each organization, including:

- Status as a private business (as opposed to a public agency or not-for-profit organization);
- Status as a subsidiary or branch of another company;
- Primary lines of work in terms of 8-digit SIC codes;
- Qualifications and interest in performing transportation-related work for state and local government agencies;
- Qualifications and interest in performing transportation-related work as a prime contractor or as a subcontractor;
- Largest prime contract or subcontract bid on or performed in the previous five years;
- Year of establishment; and
- Race/ethnicity and gender of ownership.

**Considering businesses as potentially available.** Businesses were considered to be potentially available for SJC's FAA-funded prime contracts or subcontracts if they reported possessing *all* of the following characteristics:

- a. Being a private business (as opposed to a nonprofit organization);
- b. Having performed work relevant to SJC FAA-funded contracting;
- c. Having bid on or performed transportation-related public or private sector prime contracts or subcontracts in the past five years; and
- d. Being qualified for and interested in work for local governments in California.<sup>4</sup>

The following information was also considered to determine if businesses were potentially available for specific contracts that SJC awarded during the study period:

- e. The largest contract bid on or performed in the past (i.e., relative capacity); and
- f. The year the business was established.

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<sup>3</sup> BBC offered business representatives the option of completing surveys via fax or e-mail if they preferred not to complete surveys via telephone.

<sup>4</sup> That information was gathered separately for prime contract and subcontract work.

**Steps to calculating availability.** As part of the availability analysis, the study team collected and analyzed relevant information to develop dollar-weighted availability estimates to help SJC set its overall DBE goal. Dollar-weighted availability estimates represent the percentage of FAA-funded contracting dollars that potential DBEs would be expected to receive based on their availability for specific types and sizes of SJC's FAA-funded prime contracts and subcontracts. The approach to calculating availability was a bottom up, contract-by-contract "matching" approach.

Only a proportion of the businesses in the availability database were considered potentially available for any given SJC construction or engineering prime contract or subcontract (referred to collectively as "contract elements"). The study team first examined the characteristics of each specific FAA-funded contract element, including type of work, contract size, and contract date.<sup>5</sup> Businesses were then identified in the availability database that perform work of that type, of that size, in that role (i.e., prime contractor or subcontractor), and that were in business in the year that the contract element was awarded.

The study team identified the specific characteristics of each FAA-funded prime contract and subcontract that the study team examined as part of the disparity study and then, for the purposes of helping SJC establish a base figure, took the following steps to calculate the availability of potential DBEs for each FAA-funded contract element:

1. For each contract element, the study team identified businesses in the availability database that reported that they:
  - Are qualified and interested in performing transportation-related work in that particular role for that specific type of work (based on 8-digit SIC codes) for SJC;
  - Have bid on or performed work of that size; and
  - Were in business in the year that SJC awarded the contract.
2. The number of potential DBEs were then counted (by race/ethnicity and gender) relative to all businesses in the availability database that met the criteria specified in Step 1.
3. The study team translated the numeric availability of potential DBEs for the contract element into percentage availability.

BBC repeated those steps for each FAA-funded contract element examined as part of the disparity study. BBC multiplied the percentage availability for each contract element by the dollars associated with the contract element, added results across all contract elements, and divided by the total dollars for all contract elements.<sup>6</sup> The result was a dollar-weighted estimate of the overall availability of potential DBEs and estimates of availability by each relevant racial/ethnic and gender group.

BBC expressed availability as the percentage of the associated contracting dollars that one might expect potential DBEs to receive based on various factors including the type of work involved, and the size of the contract. Figure 1 presents detailed information about the base figure for SJC's proposed overall DBE goal:

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<sup>5</sup> All of the SJC FAA-funded contract elements during the study period were in the construction industry. The study team did not identify any engineering-related contracting.

<sup>6</sup> The accompanying Excel spreadsheet provides the detailed calculations.



- The first column presents the groups of potential DBEs that BBC considered as part of the base figure analysis; and
- The second column presents the availability percentage for each group for all FAA-funded contract elements.

As presented in Figure 1, the availability analysis shows that potential DBEs could be considered available for 14.5 percent of SJC's FAA-funded prime contracts and subcontracts. Thus, SJC considers 14.5 percent as its base figure.

**Figure 1.**  
**Availability components of the base figure**

Potential DBEs	Availability percentage
Black American-owned	0.4 %
Asian-Pacific American-owned	1.1
Subcontinent Asian American-owned	0.3
Hispanic American-owned	6.1
Native American-owned	0.1
Non-Hispanic White women-owned	6.6
<b>Total potential DBEs</b>	<b>14.5 %</b>

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.

Source: BBC Research & Consulting, 2014.

## **Step 2. Determining if an Adjustment is Needed – 49 CFR Section 26.45(d)**

After establishing the base figure, SJC considered available information to determine whether any adjustment was needed to the base figure to determine the overall DBE goal and to make it as precise as possible. In considering an adjustment to the base figure, SJC evaluated information about:

- Current capacity of DBEs to perform work on FAA-funded contracting;
- Any disparities in the ability of DBEs to get financing, bonding, and insurance;
- Employment, self-employment, education, training, and unions;
- Other relevant data; and
- Comments from stakeholders.

SJC considered all of the above information in considering whether to make an adjustment to the base figure.

**Current capacity of DBEs to perform work on DOT-assisted contracting.** USDOT's "Tips for Goal-Setting" suggests that agencies should examine data on past DBE participation on their USDOT-funded contracts in recent years. USDOT further suggests that agencies should choose the median level of annual DBE participation for those years as the measure of past

participation. City staff responsible for SJC's DBE program confirmed that median DBE participation on SJC's FAA-funded contracts from FFYs 2009 through 2014 (as of July 2014) was 0.0 percent. Averaging the 14.5 percent base figure with 0.0 percent suggests a downward adjustment of the step-1 base figure to 7.25 percent.

**Any disparities in the ability of DBEs to get financing, bonding, and insurance.** BBC's analysis of access to financing, bonding, and insurance in recent Federal DBE Program-related disparity studies conducted in California revealed quantitative and qualitative evidence that minorities, women, and minority- and women-owned businesses (MBE/WBEs) do not have the same access to those business inputs as non-Hispanic white males and non-Hispanic white male-owned businesses in California.<sup>7</sup> Any barriers to obtaining financing, bonding, and insurance might affect opportunities for minorities and women to successfully form and operate construction and engineering businesses in SJC's marketplace. Any barriers that MBE/WBEs face in obtaining financing, bonding, and insurance would also place those businesses at a disadvantage in obtaining SJC FAA-funded prime contracts and subcontracts.

**Employment, self-employment, education, training, and unions.** BBC used regression analyses to investigate whether race/ethnicity or gender affects rates of self-employment among workers in the Santa Clara county and Alameda county construction industry marketplace. The regression analyses allowed BBC to examine those effects while statistically controlling for various race- and gender-neutral personal characteristics including education and age.<sup>8</sup> The analyses revealed that Hispanic Americans, Native Americans and women were substantially less likely than non-Hispanic whites and males to own construction businesses after accounting for various race- and gender-neutral personal characteristics.

**Figure 2.**  
**Comparison of actual business ownership rates to simulated rates for Alameda county and Santa Clara county construction workers, 2009-2011**

Group	Self-employment rate		Disparity index (100 = parity)
	Actual	Benchmark	
Hispanic American	13.4%	18.9%	71
Native American	5.6%	21.4%	26
White female	12.3%	37.7%	33

Note: n=993 for Hispanic American group, n=28 for Native American group, and n=141 for White female group.

Source: BBC Research & Consulting from statistical models of 2009-2011 ACS data.

BBC analyzed the impact that barriers to self-employment would have on the base figure. BBC estimated the availability of potential DBEs if minorities and women owned businesses at the same rate as non-Hispanic white males who share similar race- and gender-neutral personal characteristics. The analysis included the same set of contracting dollars that BBC used to determine the base figure (i.e., FAA-funded construction contracting dollars that SJC awarded during the study period). BBC took the following steps to complete the analysis:

<sup>7</sup> See the Caltrans 2012 FHWA disparity study and the Caltrans 2014 FTA disparity study.

<sup>8</sup> For a detailed explanation of that analysis, see Appendix F of the Caltrans 2012 FHWA disparity study report.

1. BBC made adjustments to availability percentages for construction contracts based on observed disparities in self-employment rates for minorities and women. BBC only made adjustments for those groups that exhibited statistically significant disparities in self-employment rates compared to non-Hispanic whites and males.
2. BBC then rescaled the availability percentages to equal 100 percent.

That analysis suggests that SJC consider an upward step-2 adjustment to 26.3 percent

**Other relevant data.** The Federal DBE Program suggests that federal aid recipients also examine “other factors” when determining whether to make any step-2 adjustments to their base figures.<sup>9</sup>

There is quantitative evidence in California that certain groups of MBE/WBEs are less successful than non-Hispanic white male-owned businesses and face greater barriers in the marketplace, even after considering race- and gender-neutral factors. Appendix H of the Caltrans 2012 FHWA disparity study report presents that evidence. There is also qualitative evidence of barriers to the success of MBE/WBEs, as explored in Appendix J of the Caltrans 2012 FHWA disparity study report. Some of that information suggests that discrimination on the basis of race/ethnicity and gender affects MBE/WBEs in the California transportation contracting industry.

**Stakeholder consultation.** On January 12, 2015, the City/SJC held a face-to-face meeting with stakeholders to consult with them on the goal-setting methodology and a proposed goal of 7.25%, which most expressed was too low, and as such would not provide an incentive for small businesses, including DBEs, to participate in SJC contracts.

**Step 2 adjustment.** SJC has considered available information relevant to a potential step-2 adjustment and proposes to make a downward adjustment to the base figure. SJC proposes to make a downward adjustment that specifically accounts for the current capacity of DBEs to perform work on FAA-funded contracting. Based on median past participation and stakeholder input, the City proposes to adjust SJC’s base figure downward to 10.28 percent, consistent with Oakland International Airport’s (OAK) DBE goal. OAK is another DOT recipient in a substantially similar market as SJC.

### Number and Type of Projects that the Airport Anticipates Awarding

SJC anticipates awarding six DOT-assisted contracts between FFY 2014 and FFY 2016. Figure 3 provides a brief description of each contract and the anticipated DOT-assisted contract amount.

**Figure 3.**  
**Anticipated DOT-assisted contracts, FFY 2014 – FFY 2016**

Year and Project Description	DOT-assisted contract amount

<sup>9</sup> 49 CFR Section 26.45.

<b>FFY 2014</b>		
1	Design & Construction FIS Sterile Corridor	\$1,440,212
2	Design Runway PCC Pavement Reconstruction	\$241,620
3	Design Part 139 Compliance (No Taxi & Sign Modification)	\$69,739
<b>FFY 2015</b>		
4	Construction Runway PCC Pavement Reconstruction/No Taxi Island/Airfield Sign Modifications	\$2,981,000
5	Planning Airfield Geometric Correction	\$300,000
<b>FFY 2016</b>		
6	Environmental Airfield Geometric Correction	\$450,000
7	Safety Management Systems (SMS)	\$150,000
8	Design of Ramp - South of T/B	\$1,000,000
9	Construction of Ramp - South of T/B	\$5,000,000
10	Air Rescue Fire Fighting (ARFF) Vehicle Replacement	\$1,065,000

Source: SJC, 2014.

As shown in Figure 4, SJC anticipates a total of \$12,697,571 in DOT-assisted contracts between FFY 2014 and FFY 2016.

**Figure 4.**  
**Anticipated DOT-assisted contract amount by year**

<b>Federal Fiscal Year</b>	<b>DOT-assisted contract amount</b>
<b>2014</b>	\$1,751,571
<b>2015</b>	\$3,281,000
<b>2016</b>	<u>\$7,665,000</u>
<b>Total</b>	\$12,697,571

Source: SJC, 2014.

#### **Race-/Gender-Neutral and Race/Gender-Conscious Split – 49 CFR Section 26.51 (c)**

The City will meet the maximum feasible portion of its overall goal by using the following race-neutral methods for DBE and small business participation in SJC contract opportunities:

- Arranging contract solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate and maximize DBE and other small business participation;

- Providing technical and referral assistance to DBEs and small businesses to overcome challenges or barriers to contract participation such as inability to obtain or satisfy bonding or financing requirements;
- Disseminating contract opportunity information with sufficient lead time so that DBEs and small businesses have a meaningful opportunity to participate in SJC contracts;
- Providing supportive and referral services addressing business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- Providing strategies to enhance and expand the capacity of DBEs and other small businesses to handle increasingly significant projects, and achieve eventual self-sufficiency;
- Assisting start-up firms, particularly in fields in which DBE participation has historically been low;
- Distributing the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
- Assisting DBEs and other small businesses develop their capability to utilize emerging technology and conduct business through electronic media; and

The City estimates that in meeting its 10.28%, overall goal it will obtain 100% from race-neutral participation and 0% through race-conscious measures.

Although the City does not have a history of DBE participation or over-achievement of goals to reference, we expect to obtain DBE participation through the use of race-neutral efforts. Therefore, we are applying the entire goal of 10.28% to race-neutral participation.

The City will adjust the estimated breakout of race-neutral and race-conscious DBE participation as needed to reflect actual DBE participation (see Section 26.51(f)) and track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal, DBE participation on a prime contract exceeding a contract goal and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

### **Public Participation – 49 CFR Section 26.45(g)**

Before establishing the final overall goal, the City consulted with stakeholders on January 12, 2015 to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City efforts to establish a level playing field for the participation of DBEs.

The following stakeholders attended the meeting:

Nancy Avila, Vietnamese American Business Chamber of Commerce  
 Romena Jonas, PGI  
 Bill Lyon, RAM Inc.  
 Derek Miles, Northern California Fire Protection Compliance Group  
 Alan Nguyen, Vietnamese American Business Chamber of Commerce  
 Reginald Swilley, Minority Business Consortium

Following the consultation, a notice of the proposed overall goal will be published in the San Jose Mercury News, the San Jose Post Record, the Minority Business Entrepreneur and the Airport Minority Advisory Council and on the City's website informing the public that the proposed goal and its rationale are available for inspection during normal business hours, and that the City will accept written comments on the proposed goal for 45 days following the date of the notice at the following address:

City of San Jose  
Attention: Nina Grayson  
200 East Santa Clara Street  
Fifth Floor  
San Jose CA 95113  
[nina.grayson@sanjoseca.gov](mailto:nina.grayson@sanjoseca.gov)

Our final overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses, if any.

## **PUBLIC NOTICE**

The City of San Jose hereby announces its fiscal year 2014 goal of 10.28% for Disadvantaged Business Enterprise (DBE) airport construction projects. The proposed goals and rationale is available for inspection between 8:00 a.m. and 5:00 p.m., Monday through Friday at 200 East Santa Clara Street, Fifth Floor, San Jose CA 95113 and for 30 days from the date of this publication.

Comments on the DBE goal will be accepted for 45 days from the date of this publication and can be sent to the following:

Nina Grayson  
Office of Equality Assurance  
200 East Santa Clara Street  
Fifth Floor  
San Jose CA 95113  
[nina.grayson@sanjoseca.gov](mailto:nina.grayson@sanjoseca.gov)

or

Patricia Wright  
FAA Western Pacific Regional Office  
P O Box 92007, AWP-9  
Los Angeles CA 90009-2007  
[patricia.wright@faa.gov](mailto:patricia.wright@faa.gov)

**ATTACHMENT 6**

**Demonstration of Good Faith Efforts - Forms 1 & 2**

**FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

\_\_\_\_\_ The bidder/offeror is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract.

\_\_\_\_\_ The bidder/offeror (if unable to meet the DBE goal of \_\_\_\_\_%) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and should submit documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_  
(Signature) Title



**FORM 2: LETTER OF INTENT**

Name of bidder/offeror's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

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The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_.

**Affirmation**

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above and that the firm is DBE certified to perform the specific trades.

By \_\_\_\_\_  
(Signature)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Title)

**If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.**

## **ATTACHMENT 7**

### **DBE Monitoring and Enforcement Mechanisms**

The City of San Jose has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to California Civil Code Sections 3300 - 3322;

In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001.

## **ATTACHMENT 8**

The DBE Certification Application Form can be found at

[http://www.dot.ca.gov/hq/bep/business\\_forms.htm](http://www.dot.ca.gov/hq/bep/business_forms.htm)

**ATTACHMENT 9**  
State's UCP Agreement

The City of Jose's agreement with the California Unified Certification Program could not be located at the present time.

## ATTACHMENT 10

FOLLOWING IS THE CITY OF SAN JOSE'S APPROVED SMALL BUSINESS ELEMENT PROGRAM

### **Section 26.39            Fostering Small Business Participation**

#### Objectives

In accordance with the requirements of 49 CFR Part 26, the City is incorporating this small business participation element in its DBE program to facilitate competition by and expansion of opportunities for DBEs and other small businesses.

The City is committed to taking all reasonable steps to eliminate obstacles to the participation of DBEs and other small businesses as prime contractors or subcontractors in federally funded City procurements. The City will meet its objectives using a combination of the methods and strategies outlined below.

#### Assurances

The City's DBE program is open to small businesses that meet the program standards contained in this document regardless of their location; there is no geographic or local preference imposed on federally-assisted contracts. This element of the City's DBE Program is a race, ethnicity, and gender-neutral program. Reasonable efforts will be made to avoid creating barriers to the use of new, emerging, or untried businesses.

The City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this element of its DBE Program.

#### Definitions

DBEs and other small businesses eligible to participate in the City's DBE program are defined as follows:

Disadvantaged Business Enterprise (DBE): A for-profit small business that is 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. A DBE must be certified as such by a certifying entity of the California Unified Certification Program (CUCP) in accordance with the certification standards of 49 CFR Part 26.

Small Business Enterprise (SBE): A for-profit small business that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding 12 months or on sales volume averaged over a three-year period. For the purposes of this element of our DBE Program, Small Business Enterprises must meet the definitions of Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121).

#### Certification and Verification Procedures

The City will accept the following certifications and verification procedures for participation in this small business component of its DBE Program, with applicable stipulations:

**CUCP DBE Certification:** The City will rely upon the certification and verification procedures utilized by the CUCP certifying entities to confirm eligibility of DBEs in accordance with 49 CFR Part 26.

**SBA 8(a) Business Development Certification** - The City will rely upon the certification and verification procedures described in 13 CFR Parts 121 and 124. Firms will not be permitted to self-certify and are required to submit at the time of proposal submission the following documents as evidence of eligibility:

- A copy of the firm's tax returns for the most recent three year period indicating the firm's average gross receipts; and
- A copy of the firm's payroll statement indicating the average annual employment for the most recent full year.

#### Contracting Requirements

The City's DBE program provides for contracting requirements that are structured to facilitate competition by small business concerns, and small business participation in procurements as prime contractors or subcontractors. The reasonable steps the City takes to eliminate obstacles to small business participation include:

1. In multi-year design-build contracts or other large contracts (e.g., "megaprojects") bidders on the prime contract will be asked in the solicitation process to voluntarily specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
2. Depending on the type, size and dollar value of a contract, the availability of small businesses, and the financial resources and capacity of small business concerns, the City will make reasonable efforts to divide contracts into smaller-sized packages on a case-by-case basis. Solicitation documents will clearly identify these contract opportunities.
3. On contracts not having DBE goals, the prime contractor will be asked to identify in its proposal to the City business opportunities for small business participation in the contract of a size that small businesses, including DBEs, can reasonably perform or provide, rather than self-performing all the work involved or supplying all the goods and services in support of the contract.
4. The City will ensure that solicitation language is stated so that consortia or joint ventures consisting of small businesses, including DBEs, are encouraged to compete for and perform prime contracts. This will also be accomplished by providing information at pre-proposal meetings, and through advertisements of opportunities, direct contact with small businesses, and other outreach activities.
5. To meet the portion of our overall goal projected to be met through race-neutral measures, the City will ensure that the components of work of a contract that small businesses, including DBEs, can reasonably perform are stated in solicitation documents, including the NAICS code(s). This will also be accomplished through advertisements of opportunities, and at pre-proposal meetings and other outreach activities.
6. In the solicitation process, bidders/offerors will be asked to identify voluntary actions they will take to assist small businesses with issues such as obtaining performance guarantees, lines of credit, and insurance. Proposers will be asked to approach this with the goal of lowering or eliminating barriers to small business participation in the contract.
7. In the solicitation documents, advertisements of contract opportunities, and in outreach efforts, bidders/offerors will be advised of the City's strong desire to have all types of small businesses participate in its federally funded contracts. Prime contractors will also be asked to make voluntary efforts to include small businesses in their proposals for contracts that do not have DBE goals. All proposers should approach this with the goal of maximizing active participation from small businesses.

8. Proposers will be strongly encouraged to identify any business participation requirements that may limit or exclude participation of a small business in the contract and to inform the City of any such limitations or exclusions. Proposers will be asked to approach this through their own outreach efforts and with the goal of minimizing barriers to participation while maintaining the operation standards of the contract.
9. In meeting its good faith efforts requirements, the City will take reasonable steps to encourage small businesses which are also owned and controlled by socially and economically disadvantaged individuals to seek DBE certification. This will be accomplished through outreach efforts and informational programs, direct contact and in solicitation documents.
10. Only DBE certified firms will be counted towards the City's DBE race-neutral participation on federally-funded contracts.

#### Implementation Schedule

The City will approve this small business element of its DBE program by \_\_\_\_\_, and will implement it within 90 days of USDOT's approval of this small business element.